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COMMISSION TO REVISE THE ANNOTATED CODE

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January 21, 1985

REPORT ON HOUSE BILL 1

STATE FINANCE AND PROCUREMENT ARTICLE

I. GENERAL STRUCTURE AND HISTORY OF STATE FINANCE AND PROCUREMENT ARTICLE.

The proposed State Finance and Procurement Article is divided into three "divisions", each consisting of between one and ten titles. House Bill 1 creates the article and enacts the ten titles that comprise Division I. House Bill 2 transfers existing Article 21 into Division II of the State Finance and Procurement Article as Titles 11 through 19. House Bill 3 enacts Title 21, which will be the only title in Division III. Title 20, in Division III, will be reserved.

The decision to divide the proposed article into three divisions was prompted by the likelihood that major substantive legislation amending existing Article 21 would be introduced in the 1985 Session. Because the Commission to Revise the Annotated Code believed it to be impracticable for a bill making major amendments to Article 21 and a bill revising that article to be considered in the same Session, the Commission decided to transfer Article 21 into the new article as Division II and to revise the relevant procurement provisions now outside of Article 21 and place them in Division III of the new article.

Once whatever major substantive procurement legislation is to be passed becomes law, the Commission then intends to resume

"It is true that a codification of previously enacted legislation, eliminating repealed laws and systematically arranging the laws by subject matter, becomes an official Code when adopted by the Legislature, and, since it constitutes the latest expression of the legislative will, it controls over all previous expressions on the subject, if the Legislature so provides. However, the principal function of a Code is to reorganize the statutes and state them in simpler form. Consequently any changes made in them by a Code are presumed to be for the purpose of clarity rather than change of meaning. Therefore, even a change in the phraseology of a statute by a codification thereof will not ordinarily modify the law, unless the change is so radical and material that the intention of the Legislature to modify the law appears unmistakably from the language of the Code."

See also Bureau of Mines v. George's Creek Coal and Land Co., 272 Md. 143, (1974); Baltimore Tank Lines v. Public Service Commission, 215 Md. 125 (1957); Welsh v. Kuntz, 196 Md. 86 (1950); Crow v. Hubbard, 62 Md. 560 (1884); and Matter of Anderson, 20 Md. App. 31 (1974).

III. FORM OF HOUSE BILL 1; REVISOR'S NOTES.

In Section 2 of House Bill 1, which enacts the new State Finance and Procurement Article and the substance of Division I of the new article, the statutory text is printed in all capital letters as though the language is entirely new. However, in many instances, a comparison of the revised law with the present law (described in the revisor's notes as the "former" law) will reveal that the proposed changes are merely stylistic improvements.

Each section, or, in some instances, subsection, of the revised law is followed by a revisor's note that identifies the present law that the new section or subsection replaces. These revisor's notes also explain all significant changes made in the revision process, and thus provide a link between the present law and the revised law that replaces it by explaining, in detail, the relationship of the old law and the new.

The revisor's notes, although not part of the law, serve an important function in preserving the intent and substance of the present or "source" law. In Murray v. State, 27 Md. App. 404 (1975), the Court of Special Appeals recognized the importance of revisor's notes not only as a statement of the revisor's intent, but as a statement of legislative intent as well:

"These notes were part of the legislation enacting the

it was presented to and thoroughly reviewed by the Commission's State Government Committee, chaired by the Honorable Alan M. Wilner. Other members of the Committee included Avery Aisenstark, Esquire, Judith A. Arnold, Esquire, Bruce C. Bereano, Esquire, Allan Blumberg, Esquire, Carl E. Eastwick, Esquire, Judson P. Garrett, Jr., Esquire, Thomas J. Peddicord, Jr., Esquire, Thomas E. Plank, Esquire, and Jack C. Tranter, Esquire.

Following extensive review and ultimate approval by the State Government Committee, the drafts were submitted to the full Commission for further detailed review before final approval.

In preparing the proposed State Finance and Procurement Article, the Commission, the State Government Committee, and the staff of the Commission received help from numerous assistant attorneys general, officials and employees of State, county, and municipal agencies, and others from the private sector. These individuals explained provisions, advised about administrative practices, provided valuable insights, reviewed drafts, and attended and actively participated in Committee and Commission meetings. Although space does not permit listing the names of all these individuals, the Commission, the State Government Committee, and the staff of the Commission are deeply indebted to these individuals and sincerely thank them.

VI. NECESSARY MODIFICATION AND CHANGE.

The following is a representative cross-section of the typical changes proposed by the Commission as part of the enactment of the State Finance and Procurement Article. Some of the essentially routine changes exemplified below are also made elsewhere in the State Finance and Procurement Article but are not detailed in this report, in the interest of brevity. All references to page numbers in House Bill 1 refer to the First Reading File Copy of the bill.

A. Unnecessary provisions.

Some existing statutory language is plainly unnecessary. Examples of such language include unused definitions and provisions that are redundant of other, more general provisions. An example of a definition that is deleted in House Bill 1 as unnecessary is the definition of "State loans" in existing Article 31, § 2B. As § 2B is revised in the proposed State Finance and Procurement Article, the term "State loans" is not used, so the definition becomes unnecessary. See the revisor's note to § 8-122, on page 284 of House Bill 1.

B. Obsolete provisions.

Some statutory language becomes obsolete with the passage of

relating to the Fiscal Year and certain reports and statements that are required of the State Comptroller, the State Treasurer, units of the State government, counties, municipal corporations, and others.

Subtitle 2 is entitled "Gift and Grants" and contains provisions relating to gifts and federal aid to the State.

Subtitle 3, entitled "Facsimile Signatures and Seals", is the Maryland Uniform Facsimile Signature of Public Officials Act. Because this subtitle is, for the most part, a uniform law, the Commission did very little revising of its language. However, on page 26 of House Bill 1, the Commission points out that the General Assembly may wish to consider broadening the scope of Subtitle 3 to include units of political subdivisions of the State. As mandated by the General Assembly, the Commission also substituted gender-neutral language for provisions in the uniform act that connote unintended gender distinctions.

Subtitle 4, "Water and Sewerage Systems", is derived from existing Article 78A, § 54, which generally addresses the obligation of the State to pay for its share of water and sewer service to State facilities.

Subtitle 5 is entitled "Facilities of Handicapped" and contains the provisions in present Article 78A that pertain to ramps and curb cuts in streets, facilities and aids for handicapped individuals in public places, and the like. As the note at line 7 on page 34 of House Bill 1 points out, the Commission believes that the legislative findings in § 2-502 may be narrower than actually intended. Also, as the note at line 36 on page 37 explains, the Commission determined that Article 78A, § 51(d) contains a reference to a study group that no longer exists sharing certain responsibilities with the Department of General Services, and, consistent with practice, revised § 2-509 by vesting those responsibilities solely in that Department.

Subtitle 6, "Securities", includes miscellaneous provisions on the handling of securities owned or otherwise held by the State. On page 40 of House Bill 1, the revisor's note highlights the deletion of certain language that may make § 2-602 broader than present Article 95, § 19, but in a way consistent with the apparent purpose of the present section.

Title 3. Budget and Fiscal Planning.

Title 3 of the proposed State Finance and Procurement Article contains 5 subtitles, each relating directly to the Department of Budget and Fiscal Planning.

Subtitle 1, "Definitions", contains definitions applicable to all of Title 3.

authorizing the Deputy Secretary to act as Secretary in the absence of the Secretary.

Subtitle 3, "Procurement", contains the provisions relating to the Purchasing Bureau, contracts for printing for the State, purchase and control of supplies, and State leasing of real property. Of page 71 of House Bill 1, the Commission notes that the General Assembly may have intended to empower the Secretary to delegate power over State leasing of real property to the Chief of the Purchasing Bureau, but that present Article 41, § 231F, and, therefore, § 4-303, do not authorize such delegation. On page 77, the revisor's note also points out that the exemption of emergency lease transactions from all of Part III of Subtitle 3 may be broader than the General Assembly actually intended.

Subtitle 4, entitled "Public Improvements and Land Acquisition", contains the provisions relating to the Land Acquisition Division of the Department and certain powers and duties of the Department related to constructing and maintaining public improvements and enforcing the State Building Code.

Subtitle 5, "Excess and Surplus Property", contains the laws that regulate the disposal of unnecessary personal property by units of the State government and establish the role of the Department of General Services in that process. In the note beginning at the top of page 96 of House Bill 1, the Commission explains, in detail, how it resolved the conflicting provisions of present Article 41, §§ 133(c) and 236(a), both of which address the handling of money received from the sale of excess personal property of the State.

Subtitle 6, "Maintenance, Operation, and Protection of Improvements and Grounds", contains the provisions relating to the powers and duties of the Department of General Services over the certain State properties in the three enumerated areas, including among those powers certain powers to enforce traffic and parking laws. The subtitle also includes the provisions for reimbursement of the City of Annapolis for services it provides to the State, such as refuse collection. On page 98 of House Bill 1, the revisor's note at the bottom of the page explains how an ambiguity in present Article 41, § 133(a) was resolved in the revision of § 4-601, and, as described in Section VI above, the revisor's note at the top of page 99 explains the filling of a gap in the existing law. Also, on page 102, the revisor's note suggests that the General Assembly may wish to expand the reach of § 4-606 in two different ways.

Subtitle 7, entitled "State Board of Architectural Review", contains the provisions that establish the Board and its membership, powers, and duties. On page 105, the note beginning at line 4 points out a possible flaw in the process for appointing members of this Board.

Subtitle 5, "Information Management", includes the provisions that establish the role of the Department of State Planning in developing, collecting, storing, and distributing information pertinent to State, regional, and local planning.

Subtitle 6, which is entitled "State Development Plan", contains the provisions that mandate that a plan or plans for development of the State be developed by the Department of State Planning and that spell out what the plan must contain. As the revisor's note at the top of page 147 of House Bill 1 explains, the attention of the General Assembly is called particularly to § 5-614, as a significant change in language was made in revising that section in order to eliminate an extremely confusing requirement in the existing law.

Subtitle 7, "Capital Program", includes the requirement that the Department of State Planning maintain a 5-year capital program and the provisions that specify what the program must include. Subtitle 7 also contains the requirement that every request for a capital project be submitted to the Secretary of State Planning, the provisions on the Revolving Preliminary Planning Fund, and an express duty of the Department of Budget and Fiscal Planning to collaborate with the Department of State Planning in preparing the 5-year capital program. As the revisor's note at the top of page 149 of House Bill 1 explains, references to acquisition are added in § 5-703 to fill an apparent gap in the existing law. Also, as the revisor's note on page 150 of House Bill 1 notes, the Commission to Revise the Annotated Code, in revising present Article 88C, § 7, resolved an ambiguity as to the extent to which the Board of Public Works has approval authority over reimbursement of the Revolving Preliminary Planning Fund.

Subtitle 8, "State Planning Commission", is comprised of the provisions that establish that Commission, set its membership, provide for its Chairman and Secretary, set the minimum number of meetings per year and the mechanism for calling additional meetings, provide for reimbursement of its members' expenses, authorize the appointment of its subcommittees, and establish its role. The revisor's note to § 5-803 on page 152 of House Bill 1 suggests a possible strengthening of the language that calls for a diverse composition of the State Planning Commission.

Subtitle 9 is entitled "Patuxent River" and is composed of three parts. Part I consists of definitions applicable to the entire subtitle. Part II contains the provisions on the development, purpose, content, presentation, approval, revision, annual review, and distribution of the Patuxent River Watershed Policy Plan. Numerous provisions in Part II are possible candidates for recodification, as the revisor's notes to §§ 5-906, 5-907, 5-911, and 5-912, on pages 157, 157-58, 159, and 160 of House Bill 1, respectively, point out. As is noted in

Part IV of Subtitle 2 is entitled "Investments". It is comprised of four sections that specify where the Treasurer may invest State money and one section that establishes the general rule that the Treasurer must credit income from the investment of State money to the General Fund.

Part V of Subtitle 2, "Banking Services", consists of a single section that empowers the Treasurer to enter into an agreement with a "bank or trust company" with respect to compensation for banking services. The revisor's note at the top of page 195 of House Bill 1 suggests that the General Assembly may wish to consider broadening this section to cover all entities that meet the definition of "financial institution" in § 6-201(e) of the proposed new article.

Title 7. Appropriations.

Title 7 consists of four subtitles, all related to the appropriation of State money.

Subtitle 1, entitled "State Operating Budget", is divided into three parts.

Part I of Subtitle 1 contains definitions applicable to the entire subtitle. It also contains general provisions relating to the State Operating Budget, including a statement of legislative intent with respect to preparation of the proposed budget, a requirement as to the form of the proposed budget, and certain duties of the Secretary of Budget and Fiscal Planning with respect to the budget.

Part II of Subtitle 1, "Budget Bill", consists of five sections that set forth what must be in the budget bill and establish the effect of the budget bill on a conflicting statute. Section 7-108, on pages 202-03 of House Bill 1, is entirely new. The revisor's note on pages 203-04 explains, in detail, the basis for the addition of that section.

Part III of Subtitle 1, entitled "Supporting Documents", includes the requirement that the Governor submit budget books to the General Assembly with the budget bill and the provisions that establish what the budget books must contain.

Subtitle 2, "Disbursement and Expenditures", is divided into five parts and contains provisions on schedules for appropriation and disbursement of appropriations, disbursement of money from the State Treasury, checks drawn to disburse money from the State Treasury, and expenditure of State money.

Part I of Subtitle 2 contains definitions applicable to the entire subtitle and a new section, added for clarity, which states that an appropriation is required before money may be

points out two problems in § 7-237 of the revised article; chief among these is the question whether the General Assembly truly intends that an officer or agent who willfully or knowingly creates a deficiency or exceeds an appropriation in violation of § 7-237 be imprisoned in the "State Penitentiary".

Subtitle 3 is entitled "Unspent Balances" and generally relates to whether certain unspent funds revert to the General Fund and the termination of authority to spend an appropriation for a capital expenditure. The revisor's note in the middle of page 252 of House Bill 1 points out an ambiguity carried over from the existing law in § 7-301, the note at line 8 on page 255 points out a possible problem in § 7-305, and the note at the bottom of page 256 and the top of page 257 flags the revision of existing Article 15A, § 2A(a) in proposed new § 7-307.

Subtitle 4, "Supervision of Recipients", contains provisions that set forth conditions for receiving State funds and provide for monitoring for compliance with those conditions. The revisor's note on pages 263-64 of House Bill 1 calls attention to certain substitutions made in revising parts of present Article 19, § 28A in proposed new § 7-403, and also points out several problems that are carried forward into § 7-403 from the existing law. The revisor's note at line 14 on page 267 also points out a possible issue in revised § 7-404(e).

Title 8. Debt.

Title 8 of the proposed article, entitled "Debt", consists of three subtitles, each related to State debt.

Subtitle 1, "General Obligation Debt", is divided into six parts.

Part I of Subtitle 1 consists of definitions applicable to the entire subtitle.

Part II of Subtitle 1, entitled "Management Program", contains the provisions on the State Debt Management Program and the Capital Debt Affordability Committee, including the establishment of the Program and the establishment, membership, administration, meetings, and duties of the Committee. It also contains provisions requiring the Governor to make annual determinations concerning new State debt and imposing certain duties on the Governor, the Department of State Planning, and the Department of Budget and Fiscal Planning with respect to preparation and submission of the Consolidated Loan Budget. The revisor's note on page 276 of House Bill 1 suggests that the General Assembly may wish to consider enacting a change to the provision on the Consolidated Loan Budget.

Part III of Subtitle 1, "Authorization and Implementation",

Part I so as to more clearly define the applicability of Subtitle 2 versus other provisions of law.

Part II of Subtitle 2, "General Provisions", includes provisions specifying the required form of obligations covered by the subtitle, how they may be sold, when they must mature, how and when units or instrumentalities of the State may issue new obligations to refund its outstanding obligations, and in what denominations the obligations may be issued. The revisor's note on page 308 of House Bill 1 notes that the General Assembly may wish to broaden new § 8-206(e)(2), which replaces part of present Article 31, § 10. Also, the revisor's note at the top of page 312 questions whether proposed new § 8-208 may be obsolete in light of an exemption that generally appears in enabling acts.

Part III of Subtitle 2 includes the provisions that relate to the power of units or instrumentalities of the State to borrow money in anticipation of grants or the proceeds from the sale of bonds and other obligations for the payment of money. The revisor's note that begins at line 13 on page 321 of House Bill 1 suggests possible additional changes to proposed new §§ 8-213 and 8-218. Also, the revisor's note beginning at line 24 on page 323 points out the presence of the possibly unduly vague word "bank", carried forward from present Article 31, § 12, in proposed new § 8-221.

Subtitle 3 is entitled "Miscellaneous Provisions" and consists of two sections. Section 8-301 contains the general requirement that the Board of Public Works must approve contracts to spend the proceeds of a loan authorized by the General Assembly before the contracts are executed. The revisor's note in the middle of page 324 of House Bill 1 explains the revision of the exception to that general rule, set forth in § 8-301(b). Section 8-302 provides for how and when an obligation of the State or any of its units or instrumentalities will be considered to be an investment security and for the effect of the obligation being so considered.

Title 9. State Insurance Program.

Title 9 consists of the provisions that establish the State Insurance Program, the State Insurance Trust Fund, and the powers and duties of the Treasurer with respect to the Program and the Fund. Subjects addressed in these powers and duties include purchasing insurance, adopting certain regulations, providing for self-insurance, assessing premiums, and paying on losses.

Title 10. Board of Public Works -- Miscellaneous Provisions.

Title 10 consists of provisions relating to the Board of Public Works that are appropriately included in Division I of the proposed State Finance and Procurement Article but that do not